



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 808 OF 2017

NKOIPA OLE SAKITA.....1ST PLAINTIFF

SOIPANO OLE NAON.....2ND PLAINTIFF

VERSUS

MILIA MUYIANKENT.....DEFENDANT

RULING

The application before Court is the Plaintiffs' Notice of Motion dated 12th July, 2017 brought pursuant to section 3A, 18 (1) (a) of the Civil Procedure Act and all the other enabling provisions of the law.

The application is premised on the following grounds, which in summary is that the Plaintiffs' are the registered owners of plot number 351/RESIDENTIAL – OROK (MILE 9) T. CENTRE 'hereinafter referred to as the suit land' and on 10th May 2017, the Defendant encroached on it and put up structures. Despite being summoned by the Ward Administrator, the Defendant has declined to appear nor comply with orders as directed by the said Administrator. The 2nd Plaintiff has no place to settle/live in and wants to develop the said land to settle thereon.

The application is supported by the affidavit of SOIPANO OLE NAON the 2nd Plaintiff herein where he deposes that he is one of the registered owners of the suit land and the Defendant has encroached thereon and despite being ordered by the Ward Administrator, has continued to develop it. He avers that the Ward Administrator referred them to the OCS Namanga who in turn advised them to seek legal redress from court.

The Defendant was served on 24th July, 2017 but failed to enter appearance nor file any opposition to the application.

On the 27th July, 2017, the Plaintiff's Counsel submitted on the application which submissions I have considered.

Analysis and Determination

Upon perusal of the Notice of Motion dated 12th July, 2017 including the supporting affidavit as well as the annexures thereon, I find that the only issue for determination is whether the Defendant should be evicted from the suit land and compelled to demolish his structures pending the hearing and determination of the suit.

I note that the Plaintiffs were allotted the suit land on 11th November, 2011 as per the Letter of Allotment marked as annexure 'SON 1'. The Plaintiffs claim that the Defendant has encroached on the suit land and put up structures thereon. The Plaintiffs have furnished court with various letters from the Ward Administrator summoning the Defendant.

The application proceeded unopposed as the Defendant failed to file any replying affidavit to controvert the Plaintiffs' allegations.

However, I note that the orders being sought by the Plaintiffs are mandatory in nature as they seek to evict the Defendant and demolish structures thereon. In terms of ownership of the suit land, the Plaintiffs only have Letters of Allotment and not a Certificate of Lease. In the case **Stephen Mburu & 4 Others vs Comat Merchants Ltd & Anor [2012] eKLR** Kimondo J held that:

“... from a legal standpoint, a letter of allotment is not a title to property. It is a transient and [is] often a right or offer to take property”

I am persuaded by this case and find that the Plaintiffs' claim over ownership of the suit land with letters of allotment cannot be the key determinant for eviction of the Defendant from the suit land and demolition of the structures he has put thereon. I note that the orders the Plaintiffs' are seeking are mandatory in nature, and an applicant must prove that it is a clear case that the Court will be assured that the same will succeed after the trial. In the case of **Kenya Breweries Limited vs. Washington Okeyo (2002) EA 109** the Court of Appeal stated that, ' **a mandatory injunction can be granted on an interlocutory application as well as at the hearing, but in the absence of special circumstances, it will not normally, be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiff, a mandatory injunction will be granted on an interlocutory application.**'

The mandatory orders sought by the Plaintiffs for eviction of Defendant and removal of his structures from the suit land can only be granted in special circumstances where the Court thinks it ought to be decided at once, and after full trial, it will be evident that the injunction was properly granted. Even though the Defendant has not controverted the Plaintiffs' claim of ownership of the suit land, the instant case is not clear to warrant the grant of the mandatory orders sought at this juncture.

Further in terms of the eviction orders sought, Section 152E of the **Land Act** stipulates that: .

(1) if, with respect to private land the owner or the person in charge is of the opinion that a person is in occupation of his or her land without consent, the owner or the person in charge may serve on that person a notice, of not less than three months before the date of the intended eviction.

(2) the notice under subsection (1) shall —

(a) be in writing and in a national and official language;

(c) specify any terms and conditions as to the removal of buildings, the reaping of growing crops and any other matters as the case may require; and

(d) be served on the deputy county commissioner in charge of the area as well as the officer commanding the police division of the area.

I find that as per the evidence presented in the supporting affidavit, the Plaintiffs have not adhered to the above provisions of the Land Act and hence cannot seek orders for eviction of the Defendant from the suit land and demolition of the structures at this interlocutory stage. Further, the issues raised in the Plaintiff will require the Plaintiffs to provide oral evidence to enable the court make a proper determination of the suit.

In the circumstances, I find that the Plaintiffs' application dated the 12th July, 2017 is unmerited and dismiss it.

Costs will be in the cause.

Dated, signed and delivered in open court at Kajiado this 23rd day of November, 2017.

CHRISTINE OCHIENG

JUDGE

Present:

Court Assistant : Mpoye

Botani holding brief for Mutsili for plaintiff

N/A for defendant